O Partnership

1943. **File No.** 43

Legal Department

4 **BRANCH**

Subject:—

Opinions Under the

Indian Partnership Act 1932

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C O N T E N T S

Legal Department File No. O Partnership /1943

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Office of the R.L.A.

This is a reference from the Registrar of Firms who requests Government to authorise him to make rules under section 3(2)(c)(i) of the Destruction of Records Act (V of 1917) for the disposal of such records concerning matters under Indian Partnership Act, 1932, as are in hi opinion not of sufficient public value. He has submitted a draft of such rules (vide page 3.) The Home Department doubts the advisability of such a step as some rules are already made under section 71(2) of the Indian Partnership Act. The question, therefore, for the decisi of the R.L.A. is whether the powers sought by the Registrar can be delegated to him under section 3(2)(c)(i) of the Destruction of Records Act or whether it will be necessary for Government to issue a notification amplifying rule 12 of the Bombay Partnership Rules so as to include the provisions contained in the draft rules forwarded by the Registrar. He is also asked to state whether it is desirable to include papers of legal proceedings in the suggested calss B of the Registrar.

2. The Provincial Government by the provisions of the Destruction of Records Act, 1917, has power to make rule for the destruction of certain decuments generally. It has also by section 71(h) of the Indian Partnership Act, 1932, pow r to make rules for the elimination of ce tain documents relating to firms. Under that section it has already made a rule viz. rule 12 of the Bombay Partnership Rules, providing for the elimination of documents and registers relating to dissolved firms. But so far it has made no rules relating to the elimination of documents relating to existing firms. It cannot have been the intention of Government that all documents relating to existing firms should be indestrutiale. Therefore so far as regard the documents whose destruction is not dealt with by rule 12 of the Bombay Partnership Rules, there appears to be no legal object-

provided they are not inconsistent with the provisions of the Partnership Act or Rules thereunder. But since special provision is made in the partnership Act for the necessary rules it is preferable to make use of that provision rather than the general provisions of the Destruction of Records Act. The partnership Act is a later Act and makes special provision. It seems desirable that alldocuments relating to firms and the office of the Registrar should come under one set of destruction rules. It is assumed that all the documents in question can be dealt with under section 71(h) of the Partnership Act, although the exact nature of some of them is not clear. For such of the documents as can come under section 71(h) of the Partnership Act, new destruction rules may be added to the Indian Partnership Rules on the lines of the Registrar's suggestions or rule 12 may be amplified on those lines. If that view is accepted, it is unecessary to consider whether Government can delegate to the Registrar rule-making powers under the destruction of Records Act.

3. The second question for consideration is whether it is desirable to include papers relating to legal proceedings in class B which contains the papers to be preserved for five years. Section 65 of the Indian Partnership Act provides that a court deciding any matter relating to a registered firm may direct that the Registrar shall make an amendment in the entry in the Register of Firms relating to such firm which is consequently upon its upon its decision and the Registrar shall amend the entry accordingly. It is presumed that the legal proceedings relate to the decision of the court under section 65. If so, there is no legal objection to destroy documents relating to such legal proceedings provided a clear provision to that affect is made in the rules framed under caluse (h) of section 71(2) of the Indian Partnership Act.

Sd/- P.N.Moos 26/2

R. to H.D. No. 1487 dt. 26th Feb. 1943 Remembrancer of Legal Affairs

Submitted.

2. An aggregate amount of Rs. 12201/- is outstanding under on the books of the Executive Engineer's office at Belgaum, due to Messrs. Prabhavalkar, Deshpande, & Sakhadev & Co., a firm of Contractors, who jointly executed a contract of raising the level of the cause-way over the Malaprabha river at Hubli in March 1940. The Executive Engineer says that since they have not attended the office jointly to receive payment the amount is still laying unclaimed. One of the partners Mr. Sakhadev has filed a suit in the Court of the Addl. Joint Sub.Judge Belgaum, against defendant N - 1 Mr. Deshpande, and Mr. Prabhavalkar has been made party to the suit as defendant No. 2 for taking accounts from the defendant No. 1. and the suit is still pending in the court. It appears that the Executive Engineer had informed the partners, that in accordance with the standing orders of the dept that if the amount appearing outstanding under 'P.W.Deposit' are not claimed within three complete account years they wouldbe credited finally to Govt. as lapsed depoits, The deft. No. 1 applied to the court to authorise him to receive the sum of Rs. 12201/- lying with the Govt. as the amount forms a part of the suit transaction. His application for withdrawing the amount has been granted, subject to the condition imposed by plaintiff that he will deposit that he will deposit the amount in the Belgaum Banks, Belgaum, to which the deft. No. 1 has agree. Defendant No. 1 has submitted the order of the Court dated 8th March 1943 to the Executive Engineer and has requested the Govt. to pay the amount to him.

3. The question for the consideration of the R.L.A. is whether the Govt. will get a valid discharge if it pays the amount to deft. No. 1 on the authority of the court's order.

4. It appears from pages81-84 ante that the palintiff

has filed Reg. O.C No. 85 of 1952 against deft. No. 1 for taking the accounts from his and the third partner has been joined as the 2nd defendant be ause in a partnership suit all the partners should be made parties to the suit. Thus it will be necessary for deft. No. 1 to bring into the account, the sum due from theGovt. Whether the second deft. has also agreed to the 1st deft. withdrawing the amount alone, we are not concerned, because it is not a consent order where the consent of all the parties is necessary, but it is Court's order and if so, there is no objection to pay the amount to defendant No. 1, on the authority of that order. It will also be seen that the defendant No. 1 has agreed to deposit the amount in the Bank pending the decision of the suit when the final order will be passed by the court. It appears that the Goct. will get a valid discharge on the authority of the Court.

Sd/-
19/6

Office of the R.L.A.

Seen and returned

2. There is no objection to paying the anount to the partner Mr. G.C. Deshpande who has been duly authorised by the Govt. to secure the payment.

Sd/ P.N.Moos
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 4543 dated 29-6-43

Mjr/10/7

4 Cs.